

## Agricultural Marketing Service, USDA

## Pt. 1221

Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours in the Marketing Programs Branch office, Livestock and Seed Program, AMS, USDA, Room 2628-S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

[69 FR 13461, Mar. 23, 2004, as amended at 74 FR 9049, Mar. 2, 2009]

### § 1220.629 Disposition of records.

Each FSA CED will place in sealed containers marked with the identification of the "Request for Soybean Referendum," all of the form LS-51-1's along with the accompanying documentation and county summaries. Such records will be placed in a secure location under the custody of the FSA CED for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period as described above, the CED or designee shall destroy the records.

### § 1220.630 Instructions and forms.

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

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AUTHORITY: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

SOURCE: 73 FR 25407, May 6, 2008, unless otherwise noted.

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### Subpart A—Sorghum Promotion, Research, and Information Order

#### DEFINITIONS

#### § 1221.1 Act.

*Act* means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

#### § 1221.2 Board.

*Board* or *Sorghum Promotion, Research, and Information Board* means the administrative body established pursuant to § 1221.100, or such other name as recommended by the Board and approved by the Secretary.

#### § 1221.3 Calendar year.

*Calendar year* means the 12-month period from January 1 through December 31.

#### § 1221.4 Certified organization.

*Certified organization* means any organization that has been certified by the Secretary pursuant to this part as eligible to submit nominations for membership on the Board.

#### § 1221.5 Conflict of interest.

*Conflict of interest* means a situation in which a representative or employee of the Board has a direct or indirect financial interest in a person or business that performs a service for, or enters into a contract with, the Board for anything of economic value.

#### § 1221.6 Crop year.

*Crop year* means the time period by which the USDA reports crop production for sorghum and is indicated by the calendar year in which sorghum is normally harvested.

#### § 1221.7 Customs.

*Customs* means the U.S. Customs and Border Protection of the U.S. Department of Homeland Security.

#### § 1221.8 Department.

*Department* means the United States Department of Agriculture or any officer or employee of the USDA to whom

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authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

### § 1221.9 First handler.

*First handler* means the first person who buys or takes possession (excluding a common or contract carrier of sorghum owned by another) of more than 1,000 bushels of grain sorghum; or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage from producers in a calendar year for marketing. The term first handler includes a producer who markets sorghum of the producer's own production directly to consumers. In any case in which sorghum is pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program and the sorghum is forfeited by the producer in lieu of loan repayment, the Commodity Credit Corporation will be considered a first handler.

### § 1221.10 Fiscal period.

*Fiscal period* means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

### § 1221.11 Handle.

*Handle* means to engage in the receiving or acquiring of sorghum and in the shipment (except as a common or contract carrier of sorghum owned by another) or sale of sorghum, or other activity causing sorghum to enter the current of commerce.

### § 1221.12 Harvest.

*Harvest* means combining or threshing sorghum for grain and/or severing the stalks from the land with mechanized equipment.

### § 1221.13 Importer.

*Importer* means any person importing more than 1,000 bushels of grain sorghum; or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or purchases sorghum outside of the

United States for sale in the United States, and who is listed as the importer of record for such sorghum.

### § 1221.14 Information.

*Information* means information and programs that are designed to develop new markets and marketing strategies; increase market efficiency; enhance the image of sorghum on a national or international basis; and assist producers in meeting their conservation objectives. These include, but are not exclusive to:

(a) Consumer information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of sorghum;

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the sorghum industry, and activities to enhance the image of the sorghum industry.

### § 1221.15 Market.

*Market* means to sell or otherwise dispose of sorghum into intrastate, interstate, or foreign commerce by buying, distributing, or otherwise placing sorghum into commerce.

### § 1221.16 Net market price.

*Net market price* means the sales price, or other value, per volumetric unit, received by a producer for sorghum after adjustments for any premium or discount.

### § 1221.17 Net market value.

*Net market value* means:

(a) Except as provided in paragraph (b) and (c) of this section, the value found by multiplying the net market price by the appropriate quantity of the volumetric units or the minimum value in a production contract received by a producer for sorghum after adjustments for any premium or discount.

(b) For imported sorghum, the total value paid by the importer for the sorghum as reported on the appropriate Customs form; or

(c) For sorghum pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan

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program, the principal amount of the loan.

### § 1221.18 Order.

*Order* means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

### § 1221.19 Part and subpart.

*Part* means the Sorghum Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a subpart of such part.

### § 1221.20 Person.

*Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

### § 1221.21 Producer.

*Producer* means any person who is engaged in the production and sale of sorghum in the United States and who owns, or shares the ownership and risk of loss of, the sorghum.

### § 1221.22 Production.

*Production*, as used in § 1221.100, means:

(a) for the purpose of establishing the initial Board in paragraphs (a), (b), (c), (d), and (e) of § 1221.100, the volume of grain sorghum produced during the last 5 crop years, excluding the high and low years, and

(b) For the purpose of reapportionment in paragraphs (e) and (f) of § 1221.100, the total assessments collected by the Board during the last 5 crop years, excluding the high and low years.

### § 1221.23 Promotion.

*Promotion* means any action taken to present a favorable image of sorghum to the public and the end-user industry for the purpose of improving the competitive position of sorghum and stimulating the sale of sorghum. This includes paid advertising and public relations.

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### § 1221.24 Qualified sorghum producer organization.

*Qualified sorghum producer organization* means a qualified State-legislated sorghum promotion, research, and education commission or organization, approved by the Secretary. For States without a qualified State-legislated sorghum promotion, research, and education commission or organization, qualified sorghum producer organization means any qualified organization that has the primary purpose of representing sorghum producers, has sorghum producers as members, and that is approved by the Secretary.

### § 1221.25 Referendum.

*Referendum* means a referendum conducted by the Secretary pursuant to the Act whereby producers and importers are provided the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of eligible persons voting.

### § 1221.26 Research.

*Research* means any type of test, study, or analysis designed to advance the knowledge, image, desirability, use, marketability, production, product development, or quality of sorghum, including, but not limited to, research relating to yield, nutritional value, cost of production, new product development, inbred and hybrid development, nutritional value, health research, and marketing of sorghum.

### § 1221.27 Secretary.

*Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

### § 1221.28 Sorghum.

*Sorghum* means any harvested portion of *Sorghum bicolor* (L.) Moench or any related species of the genus *Sorghum* of the family Poaceae. This includes, but is not limited to, grain sorghum (including hybrid sorghum seeds, inbred sorghum line seed, and sorghum

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cultivar seed), sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage.

### § 1221.29 State.

*State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

### § 1221.30 Suspend.

*Suspend* means to issue a rule under section 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

### § 1221.31 Terminate.

*Terminate* means to issue a rule under section 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a certain date specified in the rule.

### § 1221.32 United States.

*United States* or *U.S.* means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

#### SORGHUM PROMOTION, RESEARCH, AND INFORMATION BOARD

### § 1221.100 Establishment and representation.

There is hereby established a Sorghum Promotion, Research, and Information Board, hereinafter called the Board. Representation includes, but is not limited to, fixed State seats determined by total production with at-large seats to allow representation from a broad geographical area. The Board shall initially be composed of 13 representatives, with the maximum number of producers from one State limited to 6, appointed by the Secretary from nominations as follows:

(a) The largest production State based on total production shall have 5 sorghum producers to serve as representatives.

(b) The second largest production State based on total production shall have 3 sorghum producers to serve as representatives.

(c) The third largest production State based on total production shall

have one sorghum producer to serve as a representative.

(d) There shall be 4 sorghum producers to serve as at-large national representatives with at least two representatives appointed from States not described in paragraphs (a), (b), and (c) of this section.

(e) If the value of assessments on imported sorghum reaches or exceeds the production of the third largest sorghum production State, there shall be one importer to serve as a representative plus an additional at-large national representative, with the maximum number of producers from one State being increased from six to seven.

(f) At least once every 5 years, the Board will review the geographical distribution of production of sorghum in the United States, the production of sorghum in the United States, and the value of assessments on sorghum imported into the United States. The review will be based on Board assessment records and statistics from the USDA. If warranted, the Board may recommend to the Secretary that representation on the Board be altered to reflect any changes in geographical distribution of domestic sorghum production. If, in the review, the Board determines that the value of assessments on sorghum imported into the United States exceeds 15 percent of the production of sorghum, the Board shall recommend to the Secretary that the nomination procedures and appointments to the Board be altered as necessary or appropriate to facilitate the equitable representation of importers on the Board.

### § 1221.101 Nominations.

All nominations authorized under this section shall be made in the following manner:

(a) Nominations for State-specific and at-large national seats shall be obtained by the Secretary from eligible organizations certified under § 1221.107. Certified eligible organizations representing producers in a State, or when making nominations for at-large seats, shall submit to the Secretary at least two nominees for each vacant seat. If the Secretary determines that a State

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is not represented by a certified eligible organization, then the Secretary may solicit nominations from other organizations or other persons residing in the State.

(b) If so required pursuant to § 1221.100(f), at least two nominations for the importer representative shall be submitted by the Board to the Secretary.

(c) After the establishment of the initial Board, the Secretary shall announce when a vacancy does or will exist. Nominations for subsequent Board representatives shall be submitted to the Secretary not less than 90 days prior to the expiration of the terms of the representatives whose terms are expiring, in the manner as described in this section. In the case of vacancies due to reasons other than the expiration of a term of office, successor Board members shall be appointed pursuant to section 1221.105.

(d) When there is more than one certified eligible organization representing a State or when the Secretary solicits nominations from organizations and persons residing in that State, or when eligible certified organizations are nominating persons for at-large positions, eligible certified organizations may caucus and jointly nominate two qualified producers for each position on the Board for which a representative is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary two nominees for each appointment to be made to represent that State, or to fill an at-large position.

## § 1221.102 Nominee's agreement to serve.

Any producer or person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

- (a) Serve on the Board if appointed;
- (b) Disclose any relationship with any sorghum promotion entity or with any organization that has or is being considered for a contractual relationship with the Board; and
- (c) Withdraw from participation in deliberations, decision-making, or voting on matters that concern the rela-

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tionship disclosed under paragraph (b) of this section.

## § 1221.103 Appointment.

From the nominations made pursuant to § 1221.101, the Secretary shall appoint the representatives of the Board on the basis of representation provided in § 1221.100.

## § 1221.104 Term of office.

(a) The term of office for the representatives of the Board shall be three years, except for the initial term, pursuant to paragraph (c) of this section.

(b) Representatives may serve a maximum of 2 consecutive 3-year terms.

(c) When the Board is first established, the Secretary shall establish staggered terms as follows:

(1) Largest Production State—2 representatives shall serve a 2-year term, 1 representative shall serve a 3-year term, and 2 representatives shall serve a 4-year term.

(2) Second Largest Production State—1 representative shall serve a 2-year term, 1 representative shall serve a 3-year term, and 1 representative shall serve a 4-year term.

(3) Third Largest Production State—The representative shall serve a 3-year term.

(4) At-large national—1 representative shall serve a 2-year term, 2 representatives shall serve a 3-year term, and 1 representative shall serve a 4-year term.

(5) States with multiple representatives shall have their staggered terms assigned by the Secretary. At-large national representatives shall also have their staggered terms assigned by the Secretary.

(6) Representatives serving initial terms of 2 or 4 years shall be eligible to serve a single term of 3 years after their initial 2- or 4-year term.

(d) Each representative shall continue to serve until a successor is appointed by the Secretary and has accepted the position.

(e) Any successor appointed pursuant to § 1221.105 serving 1 year or less may serve two consecutive 3-year terms.

**§ 1221.105 Vacancies.**

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, a successor for the unexpired term of such representative shall be appointed by the Secretary pursuant to § 1221.103 from the most recent list of nominations for the position pursuant to § 1221.101 or the Secretary shall request nominations for a successor pursuant to § 1221.101, except that said nomination and replacement shall not be required if an unexpired term is less than 6 months.

**§ 1221.106 Removal.**

If the Secretary determines that any person appointed under this part fails or refuses to perform his or her duties properly or engages in an act of dishonesty or willful misconduct, the Secretary shall remove the person from office. A person appointed under this part or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued service would be a detriment to the purposes of the Act.

**§ 1221.107 Certification of organizations.**

(a) The eligibility of State, regional, or national organizations to participate in making nominations for membership on the Board shall be certified by the Secretary. Those organizations that may seek certification include:

(1) State-legislated sorghum promotion, research, and information organizations;

(2) Organizations whose primary purpose is to represent sorghum producers within a State, region, or at the national level; or,

(3) Organizations that have sorghum producers as members.

(b) Such eligibility shall be based, in addition to other information, upon a report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(1) The geographic territory covered by the organization's active membership;

(2) The nature and size of the organization's active membership, proportion

of active membership accounted for by producers, a map showing the sorghum producing counties in which the organization has active members, the volume of sorghum produced in each such county, the number of sorghum producers in each such county, and the size of the organization's active sorghum producer membership in each such county;

(3) The extent to which the sorghum producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) The functions of the organization; and

(7) The ability and willingness of the organization to further the purpose and objectives of the Act.

(c) The primary consideration in determining the eligibility of an organization shall be whether its sorghum producer membership consists of a sufficiently large number of sorghum producers who produce a relatively significant volume of sorghum to reasonably warrant its participation in the nomination of State specific and national at-large members to the Board. Any sorghum producer organization found eligible by the Secretary under this section shall be certified by the Secretary, and the Secretary's determination as to eligibility shall be final.

**§ 1221.108 Procedure.**

(a) At a Board meeting, it will be considered a quorum when a simple majority of the voting representatives are present.

(b) At the start of each fiscal period, the Board will approve a chairperson, vice chairperson, and secretary/treasurer who will conduct meetings throughout that period.

(c) All Board representatives and the Secretary or the Secretary's designee will be notified at least 30 days in advance of all Board and committee meetings, unless an emergency meeting is declared.

(d) Each voting representative of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by a

simple majority of the total votes of the Board representatives present at the meeting.

(e) It will be considered a quorum at a committee meeting when a simple majority of those assigned to the committee are present at the meeting. Committees may consist of individuals other than Board representatives, and such individuals may vote in committee meetings. Committee members shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by a simple majority of the Board representatives by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all representatives must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All telephone votes shall be confirmed promptly in writing. All votes shall be recorded in Board minutes.

(g) There shall be no voting by proxy.

(h) The chairperson shall be a voting representative.

(i) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

**§ 1221.109 Compensation and reimbursement.**

The representatives of the Board shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board representatives.

**§ 1221.110 Powers and duties.**

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet not less than annually, and organize, and select from among the representatives of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines appropriate;

(d) To employ persons, other than the representatives, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs, plans, and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs, plans, or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that: Any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and, make such other reports available as the Board or the Secretary considers relevant. Furthermore, any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

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(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(f) To prepare and submit for approval of the Secretary fiscal period budgets in accordance with § 1221.112;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal period and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of Board and committee meetings as is given to representatives in order that the Secretary's representative(s) may attend such meetings;

(j) To act as intermediary between the Secretary and any producer, first handler or importer;

(k) To furnish to the Secretary any information or records that the Secretary may request;

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and with the approval of the Secretary, to make rules and regulations to effectuate the terms and provisions of this subpart;

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the sorghum industry's position in the marketplace; maintain and expand existing markets and uses for sorghum; and to carry out programs, plans, and projects designed to provide maximum benefits to the sorghum industry;

(o) To provide not less than annually a report to producers and importers accounting for the funds expended by the Board, and describing programs implemented under the Act; and to make such report available to the public upon request; and

(p) To invest funds in accordance with § 1221.115.

### § 1221.111 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that is a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, State, national, and foreign governments, other than recommending to the Secretary amendments to this part; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order that is false or misleading or disparaging to another agricultural commodity.

### EXPENSES AND ASSESSMENTS

### § 1221.112 Budget and expenses.

(a) Prior to the beginning of each fiscal period, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal period covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget that increases the budget must be approved by the Secretary. Shifts of funds that do not result in an increase in the Board's approved budget and that are consistent with this subpart and the Board's governing bylaws need not have prior approval by the Secretary.

(d) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for start-up costs and capital outlays and are limited to the first fiscal period of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects in accordance with the Order. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(g) In accordance with §1221.118(a), the Board shall deposit funds in a refund escrow account and refrain from allocating this amount for expenditure until the Order is approved by the required referendum except as provided for in §1221.118.

(h) The Board shall allocate an appropriate amount each year to allow for payment of future referendums.

(i) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the

Order, including all referendum costs in connection with the Order.

(j) The Board shall determine annually an allocation amount no less than 15 percent but no more than 25 percent of the total assessments collected on all sorghum available for any fiscal period, less the expenses pursuant to paragraph (i), for use by qualified sorghum producer organizations pursuant to §1221.128 for State programs of generic promotion, research, and information. Amounts allocated by the Board for State generic promotion, research, and information programs will be based on requests submitted to the Board by qualified sorghum producer organizations when it is determined that these requests meet the goals and objectives stated in the Act and Order. The request shall include detailed programs, plans, or projects with budgets. Qualified sorghum producer organizations shall not submit requests for State generic promotion, research, and information programs that exceed the annual allocation amount determined by the Board which shall be the product of:

(1) The State's proportional contribution based on reports submitted by first handlers pursuant to §1221.124(a) to total assessments remitted on all sorghum for the previous fiscal period; multiplied by

(2) The total assessments collected on all sorghum for the previous fiscal period less expenses pursuant to paragraph (i) of this section.

(k) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal period an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal period except for the initial fiscal period. Reimbursements to the Secretary required under paragraph (i) of this section are excluded from this limitation on spending.

(l) The Board shall allocate all other funds available for any fiscal period, to the extent practicable, subject to paragraphs (g), (h), (i), (j), and (k) of this section on programs, plans, or projects, as provided for in §1221.121.

## Agricultural Marketing Service, USDA

## § 1221.116

(m) The Board shall determine annually the allocation of total funds pursuant to this section, with the approval of the Secretary.

### § 1221.113 Financial statements.

(a) As requested by the Secretary, the Board shall prepare and submit financial statements to the Secretary on a monthly basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, fiscal period-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Board shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal period to which it applies.

### § 1221.114 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal period excess funds in a reserve so established, *provided* that funds in the reserve shall not exceed one fiscal period's anticipated expenses.

### § 1221.115 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency of the United States; general obligations of any State or any political subdivision of a State; interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve system; or obligations that are fully guaranteed as to principal and interest by the United States.

### § 1221.116 Assessments.

(a) The funds to cover the Board's expenses shall be paid from assessments on producers and importers, donations from any person not subject to assessments under this Order, and other funds available to the Board and subject to the limitations contained therein.

(b) First handlers of domestic sorghum shall be responsible for collecting assessments from producers on all domestically handled sorghum. This includes sorghum of the first handler's own production. Grain pledged as collateral for a Commodity Credit Corporation price support loan program shall be considered handled sorghum. A first handler shall not collect an assessment on sorghum from a producer when said producer presents documentation demonstrating that an assessment has previously been collected on said sorghum.

(c) The following assessment rates for sorghum shall apply:

(1) Grain sorghum shall be initially assessed at a rate of 0.6 percent of net market value received by the producer pursuant to paragraph (e) of this section; and

(2) Sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage shall be initially assessed at a rate of 0.35 percent of net market value received by the producer pursuant to paragraph (e) of this section.

(d) Importers of sorghum shall pay an assessment to the Board through Customs on sorghum imported into the United States. The following apply to imported sorghum:

(1) The assessment rates for imported sorghum shall be the same or equivalent to the rates for sorghum produced in the United States.

(2) The import assessment shall be uniformly applied to imported sorghum that is identified by the numbers 1007.00.0020 and 1007.00.0040 in the Harmonized Tariff Schedule of the United States.

(3) The assessments due on imported sorghum shall be paid when the sorghum enters the United States.

(4) If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment to the Board.

(e) The Board will review the assessment rates and may make recommendations to modify the assessment rates to the Secretary. Assessment rates may be raised or lowered no more than 0.2 percent of net market value received by producers and importers in any one calendar year. The

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maximum assessment rate cannot exceed 1 percent of the net market value received by producers and importers.

(f) Each person responsible for collecting assessments under paragraph (b) of this section shall remit the amount due to the Board in such a manner as required by regulations recommended by the Board and prescribed by the Secretary.

(g) Any unpaid assessment due to the Board pursuant to this section shall be increased 2 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment determined at a later date than the date prescribed by this subpart because of a person's failure to timely submit a report to the Board shall be considered to have been payable by the date it would have been due if the report had been filed timely. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board.

(h) An additional charge shall be imposed on any person subject to a late payment charge in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed by the Secretary.

(i) Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

(j) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(k) The collection of assessments pursuant to this section shall begin with respect to sorghum handled on or after the effective date established by the Secretary and shall continue until terminated or suspended by the Secretary.

(l) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments and invest them on behalf of the Board, and

shall pay such assessments and any interest earned to the Board when it is formed. The Secretary shall have the authority to promulgate rules and regulations concerning assessments and the collection of assessments, if the Board is not in place or is otherwise unable to develop such rules and regulations.

(m) Payment remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable to the Board. Such remittances and the reports specified in §§ 1221.124 and 1221.125 shall be mailed to the location designated by the Board.

### § 1221.117 Exemptions.

(a) Any importer of less than and including 1,000 bushels of grain sorghum or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage per calendar year may claim an exemption from the assessment required under § 1221.116.

(b) An importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a certificate of exemption. An importer shall certify that the importer will import less than and including 1,000 bushels of grain sorghum or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage.

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. It is the responsibility of these persons to retain a copy of the certificate of exemption.

(d) Importers who receive a certificate of exemption shall be eligible for reimbursement of assessments collected by Customs. These importers shall apply to the Board for reimbursement of any assessments paid. No interest will be paid on the assessments collected by Customs. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the calendar year the sorghum was actually imported.

(e) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply to the

Board, on a form provided by the Board, for a certificate of exemption.

(f) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt sorghum and, in the case of importers, proof of payment of assessments.

(g) A producer or importer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces or imports only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (m) of this section; and is not, or does not import products from, a split operation shall be exempt from the payment of assessments.

(h) To apply for an exemption under this section, the applicant shall submit the request to the Board or other party as designated by the Board, on a form provided by the Board, at any time initially and annually thereafter on or before January 1 as long as the applicant continues to be eligible for the exemption.

(i) The request shall include the following: The applicant's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(j) If the applicant complies with the requirements of this section, the Board or designee will grant the exemption and issue a Certificate of Exemption to the applicant. The Board will have 30 days from the date of receiving the request to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(k) The producer or importer shall provide a copy of the Certificate of Exemption to each first handler. The first handler shall maintain records showing the name and address of the exempt

producer or importer and the exemption number assigned by the Board.

(l) The exemption will apply at the first reporting period following the issuance of the exemption.

(m) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer or importer from exemption under this section, except that producers or importers who produce or import both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

**§ 1221.118 Refund escrow accounts.**

(a) The Board shall establish an interest bearing escrow account with a financial institution that is a member of the Federal Reserve System and will deposit into such account an amount equal to the product obtained by multiplying the total amount of assessments collected by the Board during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum by ten percent (10 percent).

(b) Upon failure of the required referendum, the Board shall pay refunds of assessments to eligible persons requesting refunds during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum in the manner specified in paragraph (c) of this section.

(c) If the amount deposited in the escrow account is less than the amount of refunds requested, the Board shall prorate the amount deposited in such account among all eligible persons who request a refund of assessments paid no later than 90 days after the required referendum results are announced by the Secretary.

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(d) If the Order is approved by the required referendum conducted under § 1221.130 then:

(1) The escrow account shall be closed; and

(2) The funds shall be available to the Board for disbursement under § 1221.112.

### § 1221.119 Refunds.

Any producer or importer from whom an assessment is collected and remitted to the Board, or who pays an assessment directly to the Board, under authority of the Act and this subpart through the announcement of the results of the required referendum, upon failure of the required referendum shall have the right to receive from the Board a refund of such assessment, or a prorated share thereof, upon submission of proof satisfactory to the Board that the producer or importer paid the assessment for which refund is sought. Any such demand shall be made by such producer or importer in accordance with the provisions of this subpart and in a manner consistent with regulations recommended by the Board and prescribed by the Secretary.

### § 1221.120 Procedure for obtaining a refund.

Upon failure of the required referendum, each producer or importer who paid an assessment pursuant to this subpart during the period beginning on the effective date of the Order and ending on the date the required referendum results are announced may obtain a refund of such assessment only by following the procedures prescribed in this section and any regulations recommended by the Board and prescribed by the Secretary:

(a) A producer or importer shall obtain a Board-approved refund application form from the Board. Such forms may be obtained by written request to the Board and the request shall bear the producer's or importer's signature or properly witnessed mark.

(b) Any producer or importer requesting a refund shall submit an application on the prescribed form to the Board within 60 days from the date the assessments were paid by such producer or importer but no later than the date the results of the required referendum are announced by the Sec-

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retary. The refund application shall show:

(1) Producer's or importer's name and address;

(2) Name and address of the person who collected applicant's assessment;

(3) Number of bushels or tons of sorghum on which a refund is requested;

(4) Total amount of refund requested;

(5) Date or inclusive dates on which assessments were paid; and

(6) The producer's or importer's signature or properly witnessed mark.

(c) The documentation provided pursuant to § 1221.125(b) to the producer by the first handler responsible for collecting an assessment pursuant to this subpart, or a copy thereof, or such other evidence deemed satisfactory to the Board, shall accompany the producer's refund application. An importer must submit documentation showing that the assessment was paid along with a copy of the appropriate Customs form stating the net market value of the sorghum.

(d) The Board shall initiate payment of refund requests, or pay a prorated share thereof, within 90 days of the date the results of the required referendum are released by the Secretary. Refunds shall be paid in a manner consistent with § 1221.119.

### PROMOTION, RESEARCH, AND INFORMATION

### § 1221.121 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including consumer and industry information, with respect to sorghum; and

(2) The establishment and conduct of research with respect, but not limited to: The yield, use, nutritional value and benefits, sale, distribution, and marketing of sorghum, and the creation of new products thereof, to the end that the marketing and use of sorghum may be encouraged, expanded,

improved, or made more acceptable; and to advance the image, desirability, or quality of sorghum.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Sorghum of all origins shall be treated equally.

#### **§ 1221.122 Independent evaluation.**

Pursuant to the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401), the Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

#### **§ 1221.123 Patents, copyrights, inventions, trademarks, information, publications, and product formulations.**

(a) Any patents, copyrights, inventions, trademarks, information, publications, or product formulations developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, inventions, trademarks, information, publications,

or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1221.132 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions, trademarks, information, publications, or product formulations be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions, trademarks, information, publications, or product formulations shall be determined by agreement between the Board and the party contributing funds towards the development of such patents, copyrights, inventions, trademarks, information, publications, or product formulations in a manner consistent with paragraph (a) of this section.

#### **REPORTS, BOOKS, AND RECORDS**

#### **§ 1221.124 Reports.**

(a) Each first handler, on a State-by-State basis, will be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of bushels or tons of domestic sorghum within the State that were marketed to the first handler;

(2) Number of bushels or tons of domestic sorghum within the State on which an assessment was paid;

(3) The amount of assessments remitted on sorghum within the State;

(4) Date that any assessments were paid within the State;

(5) The explanation, if necessary, to show why the remittance is less than the applicable assessment rate multiplied by the net market price multiplied by the number of bushels or tons within the State that were marketed to the first handler; and

(6) The first handler's tax identification number.

(b) Each importer will be required to provide to the Board periodically such

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information as may be required by the Board, with the approval of the Secretary, which may include but not be limited to the following:

- (1) Number of bushels or tons of sorghum imported;
- (2) Number of bushels or tons of imported sorghum on which an assessment was paid;
- (3) The amount of assessments remitted;
- (4) Date that any assessments were paid;
- (5) The explanation, if necessary, to show why the remittance is less than the applicable assessment rate multiplied by the net market value; and
- (6) The importer's tax identification number.

## § 1221.125 Books and records.

(a) Each first handler, producer, or importer subject to this subpart shall maintain and make available during normal business hours for inspection by employees or agents of the Board or the Secretary such books and records as are necessary to carry out the provisions of this part, including records necessary to verify any required reports. Such records shall be maintained for at least 2 years beyond the fiscal period of their applicability.

(b) Each first handler responsible for collecting assessments pursuant to this subpart is required to give the producer from whom the assessment was collected, written evidence of payment of the assessment paid pursuant to this subpart. Such written evidence serving as a receipt shall include, but not be limited to, the following information:

- (1) Name and address of the first handler,
- (2) Name of producer who paid the assessment,
- (3) Total number of bushels or tons of sorghum on which the assessment was paid,
- (4) Total assessment paid by the producer,
- (5) Date on which assessments were paid, and
- (6) Such other information as the Board, with the approval of the Secretary, may require.

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## § 1221.126 Use of information.

Information from records or reports required pursuant to this subpart shall be made available to the Secretary as is appropriate to the administration or enforcement of the Act, subpart, or any regulation issued under the Act. In addition, the Secretary may authorize the use, under this part, of information regarding producers, first handlers, or importers, that is accumulated under laws or regulations other than the Act or regulations issued under the Act.

## § 1221.127 Confidential treatment.

All information obtained from books, records, or reports under the Act and this part shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board representatives, first handlers, producers, or importers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

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## § 1221.130

### QUALIFICATION OF SORGHUM PRODUCER ORGANIZATIONS

#### § 1221.128 Qualification.

(a) Organizations receiving qualification from the Secretary will be entitled to submit requests for funding to the Board pursuant to § 1221.112(j). Only one sorghum producer organization per State may be qualified.

(b) State-legislated sorghum promotion, research, and information organizations may request qualification and will be considered first for qualification by the Secretary.

(c) If a State-legislated sorghum promotion, research, and information organization does not elect to seek qualification from the Secretary within a specified time period as determined by the Secretary, or does not meet eligibility requirements as specified by the Secretary, then any State sorghum producer organization whose primary purpose is to represent sorghum producers within a State, or any other State organization that has sorghum producers as part of its membership, may request qualification.

(d) Qualification shall be based, in addition to other available information, upon a factual report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(1) The geographic territory covered by the organization's active membership;

(2) The nature and size of the organization's active membership, proportion of active membership accounted for by producers, a map showing the sorghum-producing counties in which the organization has active members, the volume of sorghum produced in each such county, the number of sorghum producers in each such county, and the size of the organization's active sorghum producer membership in each such county;

(3) The extent to which the sorghum producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organizations operating funds are derived;

(6) The functions of the organization; and

(7) The ability and willingness of the organization to further the purpose and objectives of the Act.

(e) The primary consideration in determining the eligibility of an organization shall be whether its sorghum producer membership consists of a sufficiently large number of sorghum producers who produce a relatively significant volume of sorghum to reasonably warrant its qualification to submit requests for funding to the Board. Any sorghum producer organization found eligible by the Secretary under this section will be qualified by the Secretary, and the Secretary's determination as to eligibility shall be final.

### MISCELLANEOUS

#### § 1221.129 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

#### § 1221.130 Referenda.

(a) For the purpose of ascertaining whether the persons subject to this part favor the continuation, suspension, or termination of this part, the Secretary shall conduct a referendum among persons subject to assessments under § 1221.116 who, during a representative period determined by the Secretary, have engaged in the production or importation of sorghum.

(1) The referendum shall be conducted not later than 3 years after assessments first begin under this part.

(2) This part will be approved in a referendum if a majority of those persons voting vote for approval.

(b) The Secretary shall conduct a subsequent referendum:

(1) Not later than 7 years after assessments first begin under this part;

(2) At the request of the Board; or

(3) At the request of 10 percent or more of the sorghum producers and importers eligible to vote to determine if the persons favor the continuation, suspension, or termination of this part.

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(c) The Secretary may conduct a referendum at any time to determine whether the continuation, suspension or termination of this part or a provision of this part is favored by sorghum producers and importers eligible to vote.

(d) The Board shall reimburse the Secretary for any expenses incurred by the Secretary to conduct referenda.

(e) A referendum conducted under this section with respect to this part shall be conducted in the manner determined by the Secretary to be appropriate.

### § 1221.131 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal period whenever the Secretary determines that its suspension or termination is approved or favored by a majority of the producers and importers voting who, during a representative period determined by the Secretary, have been engaged in the production or importation of sorghum.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) No later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

### § 1221.132 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its representatives to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and prop-

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erty then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary, execute such assignments or other instruments necessary and appropriate to vest in such persons, title and right to all funds, property and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, by qualified organizations pursuant to § 1221.128 in the interest of continuing sorghum promotion, research, and information programs.

### § 1221.133 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination or amendment of this part or any subpart thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this part; or

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other persons with respect to any such violation.

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## § 1221.207

### § 1221.134 Personal liability.

No representative or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such representative or employee, except for acts of dishonesty or willful misconduct.

### § 1221.135 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

### § 1221.136 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

### § 1221.137 Rules and regulations.

The Secretary may prescribe such rules and regulations as may be necessary to effectively carry out the provisions of this subpart.

### § 1221.138 OMB control number.

The control number assigned to the information collection requirements of this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581-0246.

## Subpart B—Procedures for the Conduct of Referenda

SOURCE: 75 FR 70575, November 18, 2010, unless otherwise noted.

### DEFINITIONS

### § 1221.200 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in subpart A of this part.

### § 1221.201 Administrator, AMS.

*Administrator, AMS*, means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

### § 1221.202 Administrator, FSA.

*Administrator, FSA*, means the Administrator of the Farm Service Agency, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

### § 1221.203 Eligible person.

*Eligible person* is defined as any person subject to the assessment who during the representative period determined by the Secretary has engaged in the production or importation of sorghum. Such persons are eligible to participate in the referendum.

### § 1221.204 Farm Service Agency.

*Farm Service Agency*, also referred to as "FSA," means the Farm Service Agency of USDA.

### § 1221.205 Farm Service Agency County Committee.

*Farm Service Agency County Committee*, also referred to as "FSA County Committee or COC," means the group of persons within a county who are elected to act as the Farm Service Agency County Committee.

### § 1221.206 Farm Service Agency County Executive Director.

*Farm Service Agency County Executive Director*, also referred to as "CED," means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and to be responsible for the day-to-day operation of the FSA county office, or the person acting in such capacity.

### § 1221.207 Farm Service Agency State Committee.

*Farm Service Agency State Committee*, also referred to as "FSA State Committee," means the group of persons within a State who are appointed by

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the Secretary to act as the Farm Service Agency State Committee.

### § 1221.208 Farm Service Agency State Executive Director.

*Farm Service Agency State Executive Director*, also referred to as “SED,” means the person within a State who is appointed by the Secretary to be responsible for the day-to-day operation of the FSA State Office, or the person acting in such capacity.

### § 1221.209 Public notice.

*Public notice* means not later than 30 days before the referendum is conducted, the Secretary shall notify the eligible voters in such manner as determined by the Secretary, of the voting period during which voting in the referendum will occur. The notice shall explain any registration and voting procedures established under section 518 of the Act.

### § 1221.210 Representative period.

*Representative period* means the period designated by the Secretary pursuant to section 518 of the Act.

### § 1221.211 Voting period.

The term *voting period* means a 4-week period to be announced by the Secretary for voting in the referendum.

## PROCEDURES

### § 1221.220 General.

A referendum to determine whether eligible persons favor the continuance of this part shall be carried out in accordance with this subpart.

(a) The referendum will be conducted at county FSA offices for producers and through AMS headquarters offices for importers.

(b) The Secretary shall determine if at least a majority of those persons voting favor the continuance of this part.

### § 1221.221 Supervision of the process for conducting referenda.

The Administrator, AMS, shall be responsible for supervising the process of permitting persons to vote in a referendum in accordance with this subpart.

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### § 1221.222 Eligibility.

(a) Any person subject to the assessment who during the representative period determined by the Secretary has engaged in the production or importation of sorghum is eligible to participate in the referendum. An eligible person at the time of the referendum and during the representative period, shall be entitled to cast only one vote in the referendum.

(b) *Proxy registration*. Proxy registration is not authorized, except that an officer or employee of a corporate producer or importer, or any guardian, administrator, executor, or trustee of a person's estate, or an authorized representative of any eligible producer or importer entity (other than an individual person), such as a corporation or partnership, may vote on behalf of that entity. Further, an individual cannot vote on behalf of another individual (*i.e.*, spouse, family members, sharecrop lease, joint tenants, tenants in common, owners of community property, a partnership, or a corporation).

(c) Any individual, who votes on behalf of any producer or importer entity, shall certify that he or she is authorized by such entity to take such action. Upon request of the county FSA or AMS office, the person voting may be required to submit adequate evidence of such authority.

(d) *Joint and group interest*. A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation who engaged in the production or importation of sorghum during the representative period as a producer or importer entity shall be entitled to cast only one vote; provided, however, that any individual member of a group who is an eligible person separate from the group may vote separately.

### § 1221.223 Time and place of the referendum.

(a) The opportunity to vote in the referendum shall be provided during a 4-week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to vote following the procedures established in this subpart during the

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normal business hours of each county FSA or AMS office.

(b) Persons can determine the location of county FSA offices by contacting the nearest county FSA office, the State FSA office, or through an online search of FSA's Web site.

(c) Each eligible producer shall cast a ballot in the county FSA office where FSA maintains the person's administrative farm records. For eligible persons not participating in FSA programs, the opportunity to vote will be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production of sorghum in more than one county will vote in the county FSA office where the person does most of his or her business.

(d) Each eligible importer will cast a ballot in the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628-S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250-0251; Telephone: (202) 720-1115; Fax: (202) 720-1125.

### § 1221.224 Facilities.

Each county FSA office will provide:

(a) A voting place that is well known and readily accessible to persons in the county and that is equipped and arranged so that each person can complete and submit a ballot in secret without coercion, duress, or interference of any sort whatsoever, and

(b) A holding container of sufficient size so arranged that no ballot or supporting documentation can be read or removed without breaking seals on the container.

### § 1221.225 Certification and referendum ballot form.

Form LS-379 shall be used to vote in the referendum and certify eligibility. Eligible persons will be required to complete a ballot in its entirety, vote "yes" or "no" to continue the program and provide documentation such as a sales receipt or remittance form showing that the person voting was engaged in the production of sorghum during the representative period. The person or authorized representative shall sign the ballot certifying that they or the entity they represent were engaged in

the production of sorghum during the representative period.

### § 1221.226 Certification and voting procedures.

(a) Each eligible person shall be provided the opportunity to cast a ballot during the voting period announced by the Secretary.

(1) Each eligible person shall be required to complete Form LS-379 in its entirety, sign it and, provide evidence that they were engaged in the production or importation of sorghum during the representative period. The person must legibly place his or her name and, if applicable, the entity represented, address, county and, telephone number. The person shall sign and certify on Form LS-379 that:

(i) The person was engaged in the production or importation of sorghum during the representative period;

(ii) The person voting on behalf of a corporation or other entity is authorized to do so;

(iii) The person has cast only one vote; and

(2) Only a completed and signed Form LS-379 accompanied by supporting documentation showing that the person was engaged in the production or importation of sorghum during the representative period shall be considered a valid vote.

(b) To vote, eligible producers may obtain Form LS-379 in-person, by mail, or by facsimile from county FSA offices or through the Internet during the voting period. A completed and signed Form LS-379 and supporting documentation, such as a sales receipt or remittance form, must be returned to the appropriate county FSA office where FSA maintains and processes the person's administrative farm records. For a person not participating in FSA programs, the opportunity to vote in a referendum will be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production of sorghum in more than one county will vote in the county FSA office where the person does most of his or her business. A completed and signed Form LS-379 and the supporting

documentation may be returned in-person, by mail, or facsimile to the appropriate county FSA office. Form LS-379 and supporting documentation returned in-person or by facsimile, must be received in the appropriate county FSA office prior to the close of the work day on the final day of the voting period to be considered a valid ballot. Form LS-379 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the voting period and must be received in the county FSA office on the 5th business day following the final day of the voting period. To vote, eligible importers may obtain Form LS-379 in-person, by mail or, by facsimile from AMS offices or through the Internet during the voting period. A completed and signed Form LS-379 and supporting documentation, such as a U.S. Customs and Border Protection form 7501, must be returned to the AMS headquarters office.

(c) A completed and signed Form LS-379 and the supporting documentation may be returned in-person, by mail, or facsimile to the appropriate county FSA office for producers and to AMS office for importers. Form LS-379 and supporting documentation returned in-person or by facsimile, must be received in the appropriate county FSA office for producers or the AMS office for importers prior to the close of the work day on the final day of the voting period to be considered a valid ballot. Form LS-379 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the voting period and must be received in the county FSA office for producers and the AMS office for importers on the 5th business day following the final day of the voting period.

(d) Persons who obtain Form LS-379 in-person at the appropriate FSA county office may complete and return it the same day along with the supporting documentation. Importers who obtain Form LS-379 in-person at the appropriate AMS office may complete and return it the same day along with the supporting documentation.

**§ 1221.227 Canvassing voting ballots.**

(a) Canvassing of Form LS-379 shall take place at the appropriate county FSA offices or AMS office on the 6th business day following the final day of the voting period. Canvassing of producer ballots shall be in the presence of at least two members of the county committee. If two or more of the counties have been combined and are served by one county office, the canvassing of the requests shall be conducted by at least one member of the county committee from each county served by the county office. The FSA State committee or the State Executive Director, if authorized by the State Committee, may designate the County Executive Director (CED) and a county or State FSA office employee to canvass the ballots and report the results instead of two members of the county committee when it is determined that the number of eligible voters is so limited that having two members of the county committee present for this function is impractical, and designate the CED and/or another county or State FSA office employee to canvass requests in any emergency situation precluding at least two members of the county committee from being present to carry out the functions required in this section.

(b) Canvassing of importer ballots will be performed by AMS personnel or any other person as deemed necessary.

(c) Form LS-379 should be canvassed as follows:

(1) *Number of valid ballots.* A person has been declared eligible by FSA or AMS to vote by completing Form LS-379 in its entirety, signing it, and providing supporting documentation that shows the person who cast the ballot during the voting period was engaged in the production or importation of sorghum. Such ballot will be considered a valid ballot.

(2) *Number of ineligible ballots.* If FSA or AMS cannot determine that a person is eligible based on the submitted documentation or if the person fails to submit the required supporting documentation, the person shall be determined to be ineligible. FSA or AMS shall notify ineligible persons in writing as soon as practicable but no later than the 8th business day following the final day of the voting period.

(d) *Appeal*. A person declared to be ineligible by FSA or AMS can appeal such decision and provide additional documentation to the FSA county office or AMS within 5 business days after the postmark date of the letter of notification of ineligibility. FSA or AMS will then make a final decision on the person's eligibility and notify the person of the decision.

(e) *Invalid ballots*. An invalid ballot includes, but is not limited to the following:

(1) Form LS-379 is not signed or all required information has not been provided;

(2) Form LS-379 and supporting documentation returned in-person or by facsimile was not received by close of business on the last business day of the voting period;

(3) Form LS-379 and supporting documentation returned by mail was not postmarked by midnight of the final day of the voting period;

(4) Form LS-379 and supporting documentation returned by mail was not received in the county FSA or AMS office by the 5th business day following the final day of the voting period;

(5) Form LS-379 or supporting documentation is mutilated or marked in such a way that any required information on the Form is illegible; or

(6) Form LS-379 and supporting documentation not returned to the appropriate county FSA or AMS office.

**§ 1221.228 Counting ballots.**

(a) Form LS-379 shall be counted by county FSA offices or the AMS office on the same day as the ballots are canvassed if there are no ineligibility determinations to resolve. For those county FSA offices that do have ineligibility determinations, the requests shall be counted no later than the 14th business day following the final day of the voting period.

(b) Ballots shall be counted as follows:

(1) Number of valid ballots cast;

(2) Number of persons favoring the Order;

(3) Number of persons not favoring the Order;

(4) Number of invalid ballots.

**§ 1221.229 FSA county office report.**

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS, as soon as may be reasonably possible, but in no event shall submit no later than the 18th business day following the final day of the specified period. Each county FSA office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 calendar days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

**§ 1221.230 FSA State office report.**

Each FSA State office shall transmit to the Administrator, FSA, as soon as possible, but in no event later than the 20th business day following the final day of the voting period, a report summarizing the data contained in each of the reports from the county FSA offices. One copy of the State summary shall be filed for a period of not less than 12 months after the results have been released and available for public inspection after the results have been released.

**§ 1221.231 Results of the referendum.**

(a) The Administrator, FSA, shall submit to the Administrator, AMS, reports from all State FSA offices. The Administrator, AMS shall tabulate the results of the ballots. USDA will issue an official press release announcing the results of referendum and publish the same results in the FEDERAL REGISTER. In addition, USDA will post the official results on its Web site. State reports and related papers shall be available for public inspection upon request during normal business hours at the Marketing Programs Branch; Livestock and Seed Program, AMS, USDA, Room

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2628-S; STOP 0251; 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

### § 1221.232 Disposition of records.

Each FSA CED will place in sealed containers marked with the identification of the "Sorghum Checkoff Program Referendum," all of the Forms LS-379 along with the accompanying documentation and county summaries. Such records will be placed in a secure location under the custody of FSA CED for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period as described above, the CED or designee shall destroy the records.

### § 1221.233 Instructions and forms.

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

### § 1221.234 Confidentiality

The names of persons voting in the referendum and ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

## Subparts C-E [Reserved]

## PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

### Subpart A—Pork Promotion, Research, and Consumer Information Order

#### DEFINITIONS

- Sec.
- 1230.1 Act.
- 1230.2 Department.
- 1230.3 Secretary.
- 1230.4 Board.

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- 1230.5 Consumer information.
- 1230.6 Council.
- 1230.7 Customs Service.
- 1230.8 Delegate Body.
- 1230.9 Fiscal period.
- 1230.10 Imported.
- 1230.11 Imported pork and pork products.
- 1230.12 Importer.
- 1230.13 Market.
- 1230.14 Market value.
- 1230.15 Part and subpart.
- 1230.16 Person.
- 1230.17 Plans and projects.
- 1230.18 Porcine animal.
- 1230.19 Pork.
- 1230.20 Pork product.
- 1230.21 Producer.
- 1230.22 Promotion.
- 1230.23 Research.
- 1230.24 State.
- 1230.25 State association.
- 1230.26 State where produced.

#### NATIONAL PORK PRODUCERS DELEGATE BODY

- 1230.30 Establishment and membership.
- 1230.31 Nomination and appointment of producer members.
- 1230.32 Conduct of election.
- 1230.33 Appointment of importer members.
- 1230.34 Term of office.
- 1230.35 Vacancies.
- 1230.36 Procedure.
- 1230.37 Officers.
- 1230.38 Compensation and reimbursement.
- 1230.39 Powers and duties of the Delegate Body.

#### NATIONAL PORK BOARD

- 1230.50 Establishment and membership.
- 1230.51 Term of office.
- 1230.52 Nominations.
- 1230.53 Nominee's agreement to serve.
- 1230.54 Appointment.
- 1230.55 Vacancies.
- 1230.56 Procedure.
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- 1230.58 Powers and duties of the Board.

#### PROMOTION, RESEARCH, AND CONSUMER INFORMATION

- 1230.60 Promotion, research, and consumer information.

#### EXPENSES AND ASSESSMENTS

- 1230.70 Expenses.
- 1230.71 Assessments.
- 1230.72 Distribution of assessments.
- 1230.73 Uses of distributed assessments.
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- 1230.75 Adjustment of accounts.
- 1230.76 Charges.
- 1230.77 [Reserved]

#### REPORTS, BOOKS, AND RECORDS

- 1230.80 Reports.